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OFFICE OF PETITIONS

In re Application of	:	
Johnson, et al.	:	
Application No. 10/025,076	:	DECISION ON PETITION
Filed: December 18, 2001	:	
Attorney Docket No. 01-272-C	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 11, 2003, to accept an unintentionally delayed claim under U.S.C. 120 for the benefit of prior filed nonprovisional application nos. 09/235,691 and 08/798,284.

The petition is GRANTED.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed

was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on December 18, 2001, and was pending at the time of filing of the instant petition. Reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78 must be met. Accordingly, the examiner will, in due course, consider this benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center 3600 for consideration of the RCE filed September 11, 2003.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.



Charles Pearson
Director
Office of Petitions

Enc: Corrected Filing Receipt (2 pages)